

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SABRINA G.

Claimant,

vs.

CENTRAL VALLEY REGIONAL
CENTER,

Service Agency.

OAH No. N 2006050307

DECISION

Robert Walker, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter on June 29, 2006, in Merced, California.

Shelley Celaya, Client Appeals Specialist, Central Valley Regional Center, represented Central Valley Regional Center, the service agency.

Mario G., claimant's father, represented the claimant, Sabrina G.

ISSUES

Within the terms of the Lanterman Act, does claimant need occupational therapy? If so, what occupational therapy does she need?

If claimant needs Lanterman Act services but her local education agency is obligated to provide those same services, what is regional center's responsibility if the local education agency refuses or fails to provide the services? Must regional center provide the services?

FACTUAL FINDINGS

1. Claimant, Sabrina G., is a regional center consumer and entitled to Lanterman Act¹ services. Claimant was born on October 24, 2002, and received early start services until she turned three. In an October 24, 2005, note, Rachel Moore, Nurse Consultant for the Central Valley Regional Center, wrote that claimant continues to qualify for services under the epilepsy and mental retardation categories.

2. As part of claimant's early start program, regional center funded three hours a week of occupational therapy for sensory integration. The provider was Brighter Futures in Modesto.

3. The Merced County Special Education Local Plan Area prepared an individual education plan (IEP) for claimant dated October 24, 2005. Claimant's parents have limited English language skills. Their primary language is Spanish. They had expected Esperanza Compean, claimant's regional center service coordinator, to attend the meeting at which the IEP was developed. Ms. Compean, however, did not attend.

4. In the IEP meeting, claimant was certified as eligible for special education services because of mental retardation. The IEP contains numerous references to claimant's "severe, multiple disabilities." The IEP provides, in part, as follows: The school district is to provide claimant with special education for an extended school year and with occupational therapy services for 30 minutes once each week.

5. An October 28, 2005, regional center individual program plan (IPP) provides, in part, "Sensory Integration Therapy Provided by Brighter Futures: This service to continue through 12-9-05 to allow the child to transition to the therapy that she will be provided through Schelby School. Frequency of visit: 1 x week for 6 weeks starting 11/1/05."

6. From November 1, 2005, until December 12, 2005, regional center provided sensory integration therapy through Brighter Futures in order to help claimant transition into the school district program.

7. Claimant's parents have medical insurance through Sutter Gould Medical Foundation, and they applied for physical therapy services for claimant. Alberto Cajigas, M.D., is claimant's pediatrician. Dr. Cajigas wrote a letter dated January 5, 2006, in which he said, "Sabrina was getting physical therapy at Valley Mountain Regional Center, which was helping. It will be very important for Sabrina to continue the same therapy at Emanuel Hospital."

8. By a notice dated January 6, 2006, Sutter Gould notified claimant's parents that Dr. Cajias's request for physical therapy services was denied. The notice said, further:

¹ The Lanterman Disabilities and Services Act begins at section 4500 of the Welfare and Institutions Code.

This determination was . . . based . . . on . . . your health condition in relation to Sutter [Gould's] . . . *medical necessity criteria or guidelines* and in accordance with . . . your Evidence of Coverage, Exclusions & Limitations section.

Based on the information provided by the requesting provider/physician, you do not meet the established medical necessity criteria or guidelines for physical therapy at Emanuel Hospital.

Specifically, SGMF is not contracted with Emanuel Hospital for physical therapy services.

Instead of the service requested, we are recommending the following: Please contact your Primary Care Provider . . . to arrange a meeting with Mr. Lyle Anderson at Anderson & Baim. Mr. Anderson will evaluate your needs and assist you in getting the appropriate assistance.

9. Claimant's parents did nothing in response to this notice. They did not try to meet with Mr. Anderson.

10. On May 31, 2006, Donald M. Olson, M.D., Associate Professor of Neurology, examined claimant at Lucile Packard Children's Hospital in Palo Alto and wrote a letter to Dr. Cajigas. Dr. Olson wrote, in part, "I would like her to be getting . . . [occupational therapy and physical therapy] at least twice a week. I still think it worth trying to see if we can get some improvement in her gross motor functions at least."

11. From December of 2005 to May of 2006, a school district therapist provided occupational therapy for claimant for 30 minutes once each week.

12. Since May of 2006 claimant has received no therapy and is not scheduled to receive therapy again until school resumes in mid August of 2006.

13. Claimant's parents asked regional center to fund occupational therapy through Brighter Futures. Regional center denied the request, saying that the parents had failed to exhaust generic resources. Regional center contends as follows: The school district has an obligation to provide occupational therapy as a part of claimant's educational program. Also, claimant failed to pursue her claim under the Sutter Gould health plan. Other generic resources may be available in the community. By a request dated May 1, 2006, claimant, through her father, requested a fair hearing, and the hearing in this matter followed.

14. Ms. Compean testified that she understood that claimant's parents would not agree to claimant's receiving occupational therapy from any source other than Brighter

Futures. She said that she had offered to help with referrals to other resources but that claimant's parents were not interested in any other provider.

15. Claimant's father testified that he and claimant's mother had not said that they would not accept therapy from any source other than Brighter Futures. He testified that they had always expressed an interest in having Brighter Futures provide the therapy but that they had pursued other avenues and had been willing to accept other providers if necessary. They would have accepted therapy from Emanuel Hospital and, in fact, did accept therapy from the school district therapist.

16. It is found that claimant is entitled to three hours a week of occupational therapy for sensory integration. Claimant is not entitled to have the therapy provided by a particular provider of her choice. Regional center may provide those services through any qualified provider.

THE LAW REGARDING ENTITLEMENT

1. The Lanterman Disabilities and Services Act, beginning at section 4500 of the Welfare and Institutions Code, contains a number of provisions relevant to entitlement to services and supports.

2. The State has accepted a responsibility for persons with developmental disabilities and an obligation to them.

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life

Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age. Consumers of services and supports, and where appropriate, their parents, legal guardian, or conservator, should be empowered to make choices in all life areas. These include promoting opportunities for individuals with developmental disabilities to be integrated into the mainstream of life in their home communities, including supported living.... In providing these services, consumers and their families, when appropriate, should participate in decisions affecting their own lives, including, but not limited to, where and with whom they live,

their relationships with people in their community, the way in which they spend their time, including education, employment, and leisure, the pursuit of their own personal future, and program planning and implementation.

...

It is the intent of the Legislature that agencies serving persons with developmental disabilities shall produce evidence that their services have resulted in consumer or family empowerment and in more independent, productive, and normal lives for the persons served.²

3. The Lanterman Act is replete with provisions that elaborate on the nature of the services and supports to which developmentally disabled persons are entitled.

It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following:

A right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible. Such services shall protect the personal liberty of the individual and shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports.

A right to dignity, privacy, and humane care. To the maximum extent possible, treatment, services, and supports shall be provided in natural community settings.

A right to participate in an appropriate program of publicly supported education, regardless of degree of disability.

A right to prompt medical care and treatment.

A right to religious freedom and practice.

A right to social interaction and participation in community activities.

A right to physical exercise and recreational opportunities.

² Welf. & Inst. Code, § 4501.

A right to be free from harm, including unnecessary physical restraint, or isolation, excessive medication, abuse, or neglect.

A right to be free from hazardous procedures.

A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.³

The right of individuals with developmental disabilities to make choices in their own lives requires that all public or private agencies receiving state funds for the purpose of serving persons with developmental disabilities, including, but not limited to, regional centers, shall respect the choices made by consumers or, where appropriate, their parents, legal guardian, or conservator. Those public or private agencies shall provide consumers with opportunities to exercise decisionmaking skills in any aspect of day-to-day living⁴

“Services and supports for persons with developmental disabilities” means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not

³ *Id.* at § 4502.

⁴ *Id.* at § 4502.1.

limited to, diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, supported and sheltered employment, mental health services, recreation, counseling of the individual with a developmental disability and of his or her family, protective and other social and sociolegal services, information and referral services, follow-along services, adaptive equipment and supplies; advocacy assistance, including self-advocacy training, facilitation and peer advocates; assessment; assistance in locating a home; child care; behavior training and behavior modification programs; camping; community integration services; community support; daily living skills training; emergency and crisis intervention; facilitating circles of support; habilitation; homemaker services; infant stimulation programs; paid roommates; paid neighbors; respite; short-term out-of-home care; social skills training; specialized medical and dental care; supported living arrangements; technical and financial assistance; travel training; training for parents of children with developmental disabilities; training for parents with developmental disabilities; vouchers; and transportation services necessary to ensure delivery of services to persons with developmental disabilities. Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.⁵

In order for the state to carry out many of its responsibilities as established in this division, the state shall contract with appropriate agencies to provide fixed points of contact in the community for persons with developmental disabilities and their families, to the end that these persons may have access to the services and supports best suited to them throughout their lifetime.

...

The Legislature finds that the service provided to individuals and their families by regional centers is of such a special and unique nature that it cannot be satisfactorily provided by state agencies. Therefore, private nonprofit community agencies shall be utilized by the state for the purpose of operating regional centers.⁶

⁵ *Id.* at § 4512, subd. (b).

⁶ *Id.* at § 4620.

In approving regional center contracts, DDS shall ensure that regional center staffing patterns demonstrate that direct service coordination are the highest priority.

...

For purposes of this section, "service coordinator" means a regional center employee whose primary responsibility includes preparing, implementing, and monitoring consumers' individual program plans, securing and coordinating consumer services and supports, and providing placement and monitoring activities.

...

Contracts between DDS and regional center shall require regional center to have, or contract for, all of the following areas:

...

Other staffing arrangements related to the delivery of services that DDS determines are necessary to ensure maximum cost-effectiveness and to ensure that the service needs of consumers and families are met.⁷

It is the intent of the Legislature that regional centers assist persons with developmental disabilities and their families in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community.⁸

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the

⁷ *Id.* at § 4640.6.

⁸ *Id.* at § 4640.7, subd. (a)

individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.⁹

It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. Regional center *shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan.* . . . (Emphasis added.)

In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.

A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency which regional center and consumer or, where appropriate, his or her parents, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or any part of that consumer's program plan.¹⁰

It is the intent of the Legislature that regional centers provide or secure family support services that . . . [are] flexible and creative in meeting the unique and individual needs of families as they evolve over time.¹¹

Regional centers shall consider every possible way to assist families in maintaining their children at home, when living at home will be in the best interest of the child, before considering out-of-home placement alternatives.¹²

⁹ *Id.* at § 4646, subd. (a).

¹⁰ *Id.* at § 4648, subd. (a).

¹¹ *Id.* at § 4685, subd. (b)(2).

¹² *Id.* at § 4685, subd. (c)(2).

4. The Lanterman Act is an entitlement act. *Association for Retarded Citizens v. DDS of Developmental Services* (1985) 38 Cal.3d 384. The people who qualify under it are entitled to services and supports. Services and supports should be available to enable them to approximate the pattern of everyday living available to people without disabilities. Services and supports should be directed toward helping them achieve the most independent and normal lives possible. People have a right to dignity and privacy. Services and supports, when possible, should be provided in natural settings. People have a right to make choices in their own lives concerning where they live. Regional centers should assist people in securing those services and supports that maximize choices for living. Services and supports should assist people in achieving the greatest self-sufficiency possible and in exercising personal choices.

5. In *Williams v. Macomber*¹³ the court of appeal addressed the Lanterman Act and said:

"In order for the state to carry out many of its responsibilities as established in this division," the Act directs the State DDS of Developmental Services to contract with "appropriate private nonprofit corporations for the establishment of" a "network of regional centers." (§§ 4620, 4621.) Regional centers are authorized to "[p]urchase . . . needed services . . . which regional center determines will best" satisfy the client's needs. (§ 4648.) The Act declares: "It is the intent of the Legislature to encourage regional centers to find innovative and economical methods" of serving their clients. (§ 4651.) The Act directs that: "A regional center shall investigate every appropriate and economically feasible alternative for care of a developmentally disabled person available within the region." (§ 4652.)

. . .

The Act clearly contemplates that the services to be provided each client will be selected "on an individual basis."
(*Association for Retarded Citizens v. DDS of Developmental Services*, supra, 38 Cal.3d 384, 388.)

A primary purpose of the Act is "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family." (*Association for Retarded Citizens v. DDS of Developmental Services*, supra, 38 Cal.3d 384, 388.) In strong terms, the Act declares: "The Legislature places a high priority on providing opportunities for children

¹³ (1990) 226 Cal.App.3d 225.

with developmental disabilities to live with their families" requiring the state to "give a very high priority to the development and expansion of programs designed to assist families in caring for their children at home." (§ 4685, subd. (a).) In language directly applicable to the present case, section 4685, subdivision (b), states that "regional centers shall consider every possible way to assist families in maintaining their children at home, when living at home will be in the best interest of the child" (§ 4685, subd. (b).)

The Lanterman Act "grants the developmentally disabled person the right to be provided at state expense with only such services as are consistent with its purpose." (Association for Retarded Citizens v. DDS of Developmental Services, supra, 38 Cal.3d 384, 393.) As noted previously, a primary purpose of the Act is to "minimize the institutionalization of developmentally disabled persons and their dislocation from family."¹⁴

6. The Lanterman Act provides that, "[R]egional centers shall give a very high priority to the development and expansion of services and supports designed to assist families that are caring for their children at home. . . ."¹⁵

7. The Lanterman Act, however, also requires regional centers to be cost conscious.

[I]t is the . . . intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and *reflect the cost-effective use of public resources*.¹⁶ (Emphasis added.)

8. When selecting a provider of consumer services and supports, regional center, the consumer, or where appropriate, his or her parents, legal guardian, conservator, or authorized representative shall consider, "the cost of providing services or supports of comparable quality by different providers, if available."¹⁷

¹⁴ *Id.* at pp. 232-233.

¹⁵ Welf. & Inst. Code. § 4685, subd. (b)(1).

¹⁶ *Id.* at § 4646, subd. (a).

¹⁷ *Id.* at § 4648, subd. (a)(6)(C).

9. The Lanterman Act requires regional centers to do a number of things to conserve state resources. For example, it requires regional centers to “recognize and build on ... existing community resources.”¹⁸

10. None of these provisions concerning cost-effectiveness detracts from the fact that eligible consumers are entitled to the services and supports provided for in the Lanterman Act. These provisions concerning cost-effectiveness do teach us, however, that cost-effectiveness is an appropriate concern in choosing how services and supports will be provided. Nevertheless, there is a tension between the requirement that services and supports be cost effective and the proposition that entitlement is determined by what is needed to implement a consumer’s individual program plan. If it were not for the requirement that services and supports be cost-effective, a consumer would be entitled to anything that had any tendency at all to promote the implementation of his or her individual program plan. But the entitlement provisions must be read in conjunction with the cost effectiveness requirement. Also, one must consider the entire array of services and supports that are in place in judging whether a consumer is entitled to an additional service or support. Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities, but that does not mean that a consumer is entitled to any and all services and supports that advance that goal. Consideration must be given to the cost effectiveness of various means of pursuing that goal. And consideration must be given to the extent to which a consumer already can approximate the pattern of everyday living available to people without disabilities. Services and supports should be directed toward the achievement of the most independent life possible. Cost-effectiveness applies even to the goal of independence, and the cost of a particular service or support must be measured against the degree to which a particular service or support will advance that goal. A primary purpose of the Lanterman Act is to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family. Again, the cost-effectiveness of a particular service or support must be measured against the extent to which it will advance that goal, and consideration must be given to alternative means of advancing that goal.

LEGAL CONCLUSIONS

WITHIN THE TERMS OF THE LANTERMAN ACT, WHAT ARE CLAIMANT’S CURRENT NEEDS?

1. When regional center was providing services to claimant pursuant to the early start program, regional center provided three hours a week of occupational therapy for sensory integration. Regional center, of course, would not have funded those services unless it had determined that claimant needed them and was entitled to them.

¹⁸ *Id.* at § 4685, subd. (b)(3).

2. Dr. Cajigas, claimant's pediatrician, wrote a letter dated January 5, 2006, in which he said, "Sabrina was getting physical therapy at Valley Mountain Regional Center, which was helping. It will be very important for Sabrina to continue the same therapy at Emanuel Hospital." Dr. Olson wrote a letter to Dr. Cajigas dated May 31, 2006. Dr. Olson wrote, in part, "I would like her to be getting . . . [occupational therapy and physical therapy] at least twice a week. I still think it worth trying to see if we can get some improvement in her gross motor functions at least." Regional center offered no evidence that claimant's needs have changed or that she needs less therapy than she was receiving in the early start program.

3. It is determined that claimant is entitled to three hours a week of occupational therapy for sensory integration. If, in the future, regional center concludes that claimant no longer needs that therapy or that she needs fewer hours, regional center can convene a meeting of claimant's IPP team to review and revise the IPP. If the parties cannot agree to the appropriate level of services, regional center can issue a notice of proposed action. If claimant is not satisfied with the notice of proposed action, claimant may appeal, that is, claimant may request a fair hearing.¹⁹ For the present, however, claimant has proven that she is entitled to three hours a week of occupational therapy.

IF REGIONAL CENTER CANNOT SECURE LANTERMAN ACT SERVICES FROM ANY OTHER SOURCE, IT MUST *PURCHASE* THE SERVICES. REGIONAL CENTER IS THE PROVIDER OF LAST RESORT.

4. Regional center has a duty to urge the school district to provide the services claimant needs. If the school district refuses or fails to provide the services, regional center, as the provider of last resort, must provide them.

5. In drafting an individual program plan, a regional center is to include all services the consumer needs in order to achieve the goals set forth in the Lanterman Act. A regional center is to include services it hopes to obtain from generic sources. It is to include services it hopes will be forthcoming from natural supports. It is to include services it hopes will be provided through other resources. And the IPP is to specify from whom regional center hopes to obtain each service.²⁰ If a service is needed to achieve the goals specified in the Lanterman Act, however, it is a Lanterman act service even though regional center hopes to obtain it from a generic agency.

6. If a regional center is unable to obtain a service from the source from which it hoped to obtain it, regional center must obtain it from some other source. When a generic agency or natural support fails to provide a service that a regional center had hoped it would provide, that does not mean that regional center may just let the consumer go without. It is the responsibility of regional center to *implement* the IPP. If regional center cannot *obtain*

¹⁹ Welf. & Inst. Code § 4710.5(a).

²⁰ *Id.* at § 4646, subd. (d), and § 4646.5, subd. (a)(4).

the service from any other source, it still must *implement* the IPP. It still must *secure* the service. If all else fails, it must *purchase* the service.

[E]ach consumer shall have a designated service coordinator who is responsible for *providing* or *ensuring* that needed services ... *are available* to the consumer.²¹ (Emphases added.)

[S]ervice coordination *shall* include those activities necessary to *implement* an individual program plan, including but not limited to ... *securing*, thorough *purchasing* or by *obtaining* from generic agencies or other resources, services and supports specified in the person's individual program plan....²² (Emphases added.)

In order to achieve the stated objectives of a consumer's individual program plan, regional center *shall* conduct activities including, but not limited to ... *securing* needed services...²³ (Emphases added.)

7. A child who is three years of age or older and who qualifies for special education services has a right to receive services from his or her public school district. The child's public school district is responsible for providing a free appropriate public education and special educational instruction and services.²⁴ If the child, however, is developmentally disabled within the meaning of the Lanterman Act, a *regional center* also is responsible for providing services, services to which the child is entitled under the Lanterman Act. Any Lanterman Act consumer, no matter what his or her age, is entitled to services to enable him or her to approximate the pattern of everyday living available to people of the same age without disabilities.²⁵ A consumer is entitled to services directed toward the achievement and maintenance of an independent, productive, and normal life.²⁶ A consumer is entitled to services to help him or her participate in the mainstream life of his or her natural community.²⁷ These services include education, advocacy, family support, respite, day care,

²¹ *Id.* at § 4640.7, subd. (b).

²² *Id.* at § 4647, subd. (a).

²³ *Id.* at § 4648, subd. (a).

²⁴ Individuals With Disabilities Education Act, 20 U.S.C. § 602, subd. (3)(b)(i), and California Ed. Code, § 56000.

²⁵ Welf. & Inst. Code §§ 4501 and 4691, subd. (a).

²⁶ *Id.* at § 4502, subd. (a), and § 4646, subd. (a).

²⁷ *Id.* at § 4501 and § 4688, subd. (a).

parent training, and a host of other services. Many services address both educational and other needs. For example, speech therapy certainly is important to education and is a form of education. A federal regulation defines “related services,” as used in the Individuals with Disabilities Education Act, as including speech pathology and audiology.²⁸ Speech therapy, however, is essential to achieving many other goals that are appropriate under the Lanterman Act, also. For many people, speech therapy is essential to enable them to approximate the pattern of everyday living available to people of the same age without disabilities. Speech therapy may be essential to achievement and maintenance of an independent, productive, and normal life. Speech therapy may be essential in order to be able to participate in the mainstream life of one’s natural community. These are only examples of ways in which speech therapy may be not only educational but, also, necessary to achieving Lanterman Act goals.

8. Among the activities a regional center is required to conduct is, “advocacy for, and protection of, the civil, legal, and service rights of persons with developmental disabilities....”²⁹ A regional center is to provide each consumer with a designated service coordinator who is responsible for providing services or for ensuring that needed services are available.³⁰ The work of the service coordinator shall include securing services and supports. Generic agencies are among the sources from which a service coordinator is to secure services and supports.³¹ Regional center should assist claimant in determining what services the school district will provide and assist her in obtaining those services.

9. If a consumer who needs therapy, for example, is entitled to that therapy through some other agency, regional center should advocate for the consumer and attempt to get the other agency to provide the therapy. A regional center, however, may not take the position that, because it has failed in its advocacy function and has been unable to obtain a service from another agency, the consumer must just go without. If a service is one to which a consumer is entitled within the terms of the Lanterman Act, it is the obligation of regional center to *secure the service*. If it cannot secure the service from a generic source, it must secure it some other way, such as by purchasing it. It is not enough for regional center simply to point an accusing finger at some other agency that is failing to provide a service.

10. Also, it may be that further effort needs to be made to obtain services through claimant’s parents’ health insurance program. Claimant’s parents did fail to request a meeting with Mr. Anderson as they were directed to do in the January 6, 2006, Sutter Gould notification of denial. Regional center can help to pursue funding through the insurance program. But regional center has a duty actively to seek services for claimant and to

²⁸ 34 C.F.R. § 300.16.

²⁹ Welf. & Inst. Code § 4648, subd. (b).

³⁰ *Id.* at § 4640.7, subd. (b).

³¹ *Id.* at § 4647, subd. (a).

advocate for her. It is claimant who is regional center's consumer – not her parents. It is claimant who is entitled to services.

BY PROVIDING LANTERMAN ACT SERVICES THAT ANOTHER AGENCY REFUSES TO PROVIDE, A REGIONAL CENTER IS NOT SUPPLANTING THAT OTHER AGENCY'S BUDGET

11. A regional center cannot use Lanterman Act funds to supplant the budget of any agency that has a responsibility to provide services to the general public and is receiving public funds for providing such services.³² A regional center, however, may not use another agency's failure to provide services as an excuse for letting consumers go without Lanterman Act services. Regarding Lanterman Act services, a regional center is the provider of last resort. If another agency fails to provide needed services, there are appeals procedures to force it to discharge its responsibility. A regional center may request the area board to initiate action.³³ There is a procedure for resolving disputes between a school district and other agencies regarding who is responsible for providing a service.³⁴ But, if a service is one to which a consumer is entitled under the Lanterman Act, a regional center *must* provide it until the other agency does and must continue to provide it so long as the other agency fails to. And doing that does not amount to supplanting the budget of the other agency. In such a case regional center has not chosen to take over the work of the other agency. Rather it has merely filled a void in services until the other agency can be required to do what it should do.

³² *Id.* at § 4648, subd. (a)(8).

³³ *Id.* at § 4648, subd. (b)(2).

³⁴ Gov. Code, § 7585, and Cal. Code Regs., tit. 2, § 60600.

ORDER

1. Regional center immediately shall provided claimant with three hours a week of occupational therapy for sensory integration. Regional center may provide those services through any qualified provider.

2. Regional center shall perform its advocacy function and attempt to find a generic provider to take responsibility for providing all or part of those services. Regional center, however, shall not delay the provision of services while seeking a generic provider.

DATED: __July 7, 2006__

ROBERT WALKER
Administrative Law Judge
Office of Administrative Hearings

Notice: This is a final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.